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SAN FRANCISCO BAY CONSERVATION AND DEVELOPMENT COMMISSION
30 Van Ness Avenue, San Francisco 94102 557-3686

TO: All Commissioners and Alternates
FROM: Charles R. Roberts, Executive Director

May 3, 1973

SUBJECT: MINOR PERMITS GRANTED SINCE FEBRUARY 1, 1973 MEETING

1. To Richard O'Hara, within the 100-foot shoreline band, to construct a portion of a paved parking lot and a 350-foot long fence, at 1540 Bayshore Highway, Burlingame.

2. To Shellmaker, Inc., to dredge approximately 8,500 cubic yards of material from an existing basin adjacent to the Petaluma River and, within the 100-foot shoreline band, to construct a frame office building having approximately 1,700 square feet and a four vehicle parking structure, and to landscape at 250 Sears Point Road on the east bank of the Petaluma River.

3. To Union Oil Company of California, within the Bay, to replace 42 damaged fender piles and 9 wooden spacer blocks and to repair 53 fender piles and 6 wooden spacer blocks at the Union Oil Company's San Francisco Refinery Marine Terminal in Contra Costa County.

4. To Del Monte Corp., within the Bay to replace a wood bulkhead with a sheet steel piling bulkhead and four wharf bearing piles at the south shoreline of Alaska Basin, Encinal Terminals Alameda.

5. To Estero Municipal Improvement District, partially within the 100-foot shoreline band and partially within the Bay, to replace a pump-out station discharge facility by removing two existing 48-inch discharge pipes and constructing a new concrete culvert at the 3rd Avenue pump station in Foster City.

6. To Leslie Salt Company, within a salt pond, to install a brine pump station and pipeline to transfer brine solution between ponds, and, within the 100-foot shoreline band, to place a pipeline on the bottom of the Barge Canal to connect with Newark Slough, near the Hetch-Hetchy Aqueduct and the Southern Pacific Railroad tracks in Fremont.

7. To Basalt Rock Company, within the Bay, to dredge approximately 10,000 cubic yards of material adjacent to an existing wharf and to replace approximately 140 existing pilings and to repair a barge loading facility at Point San Pedro, Marin County.

8. To the San Francisco Port Commission, to demolish and remove a 22,000 square foot wooden pier and construct an approximately 1,000 square foot fishing pier and boat dock in the Bay at Central Basin on the San Francisco Waterfront between piers 64 and 66.

9. To Benicia Industries, Inc., to repair an existing levee in Carquinez Strait at the Benicia Industrial Park, Benicia.

10. To Union Oil Company of California, to repair an existing salt water intake pipeline structure by removing five wooden piles and an attached wooden beam structure, and to drive two new concrete-filled 14-inch steel piles attaching a 150-foot long steel support beam to the piles to support the five existing salt water intake pipes all at the Union Oil Company's San Francisco Refinery in Rodeo.

11. To William Wilcoxson, to dredge approximately 3,000 cubic yards of material from the Napa River and place the material along 1,000 feet of an adjacent levee at Edgerly Island, Napa County.

12. To George Heath, Jr., to repair a deteriorated dike adjacent to mud slough and Coyote Creek at the west end of Warren Avenue, Fremont.

13. To the Port of Oakland, within the 100-foot shoreline band, to construct (1) a 600-foot long subterranean concrete sewer pipe; (2) a 5-foot deep 80-foot long runoff ditch for water for a future storm sewer pipeline; (3) a 20-foot long storm water runoff pipe connecting the ditch described above with the Bay; and (4) rip-rap the shoreline at the outfall of the pipe at the Port of Oakland Industrial Park adjacent to Airport Channel in Oakland.

14. To Tidewater Sand and Gravel, Inc.,to dredge approximately 50,000 cubic yards of sand annually from Suisun Bay between (1) Stake Point and Middle Ground Island, and (2) immediately west of Middle Ground Island in Contra Costa County.

15. To Standard Oil of California, to replace four mooring piles and ten fender piles at the Standard Oil Company's Point Orient Wharf in Richmond.

16. To San Francisco Bay Area Rapid Transit District, to dredge approximately 200,000 cubic yards of material from the trench over the Bay Area Rapid Transit District's transbay tube and dispose of the material at the Alcatraz Island disposal site, and to place protective concrete slabs, stones, and sand in the excavated trench in the Bay at the Oakland Outer Harbor, Oakland.

17. To H. C. Thomsen Sand Dredging, Inc., to dredge approximately 50,000 cubic yards of sand from Suisun Bay between Stake Point and Middle Ground Island in Contra Costa County.

18. To Western Pacific Railroad, to dredge approximately 6,000 cubic yards of material at the south slip of the Western Pacific Railroad Company's Mole in Oakland and deposit the spoil at Alcatraz.

19. To Rodeo Sanitary District, within the 100-foot shoreline band, construct secondary treatment sewage facilities at an existing plant adjacent to San Pablo Bay in Rodeo.

20. To Thomas Hippenmeyer, within the 100-foot shoreline band, to landscape a 30-foot wide strip of land for public access to DeSilva Pond and to pave an approximately .09 acre landward of the public access at 580 Redwood Highway, Marin County.

One emergency permit was issued:

To State Division of Highways to repair an existing levee by placing approximately 50,000 cubic yards of fill at the northwestern side and west end of the Dumbarton Bridge in the City of Menlo Park to protect the adjacent State Highway Route 84 from tidal and stormwater inundation.

One memorandum of understanding was entered into:

Between the Commission and the U.S. Army Corps of Engineers providing that the Corps of Engineers will landscape and provide public access within the entire 100-ft. wide shoreline band for a length of approximately 1,200 ft. along the northern side of Pt. Isabel as part of a project to construct a bulk mail facility at Pt. Isabel in Richmond.

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SAN FRANCISCO BAY CONSERVATION AND DEVELOPMENT COMMISSION
30 Van Ness Avenue, San Francisco 557 - 3686

TO: All Commissioners and Alternates
FROM: Charles R. Roberts, Executive Director

SUBJECT: MINUTES OF MEETING OF OCTOBER 4, 1973

1. Call to Order. The meeting of the San Francisco Bay Conservation and Development Commission was called to order by Chairman William D. Evers at 2:07 p.m. in the Council Chambers, City Hall, 2449 Powell Street, Emeryville, California.

2. Roll Call. Present: Chairman Evers, Vice-Chairman Watkins, Commissioners Boggess, Bruno (and Alternate Mr. McClure), Cooper, Cuneo, Eagan (represented by Mr. Thompson), Fanning, Feinstein (represented by Mr. Lepore), Godfrey, Gladish (represented by Mr. Golden), Heller, Houghteling, Jacobson, Lammie (represented by Mr. Wolfe), McCorquodale, Ogawa, Price, Raggio, St. Clair, Wigger.

3. ~~Welcome by Mayor Donald M. Nearay~~, Emeryville. Mayor Nearay extended a warm welcome to the Commission. He said he was proud of the development that has been accomplished in Emeryville. He wished the Commission a most enjoyable day in the City of Emeryville.

4. Minutes of September 6, 1973. Mr. Wolfe said Commissioner Lammie had asked him to indicate the need for a correction on the bottom of page 5. Old language is ~~deleted~~ and new language is underlined. ~~Commissioner Lammie pointed out that the 130,000 DWT tanker requires about 55 feet of depth and that is the autherized depth over the bar.~~ The sentence should read: Commissioner Lammie pointed out that the channel over the bar reaches a maximum depth of 55 feet and this limits the tanker size that can use it. Mr. Wolfe moved that the minutes be approved as corrected; seconded by Commissioner Cuneo and unanimously approved.

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5. Report of Chairman.

a. New Commissioner. Chairman Evers indicated that Mr. Edward N. Gladish, who is now the Executive Officer of the State Lands Commission, is the new representative of that Commission to BCDC. Mr. Golden (Mr. Gladish's predecessor) will be acting as Alternate.

b. Next Meeting. Chairman Evers said the meeting scheduled for October 18 will be cancelled. The next meeting will be at 2:00 p.m., November 1, 1973, in the State Building in San Francisco. At that meeting the Commission plans to schedule the Public hearing on the annual report to the Governor and the Legislature on public acquisition of privately-owned properties within BCDC jurisdiction.

Chairman Evers said that the staff is presently processing 10 applications for major permits. He continued there is some problem involved with each of these applications which prevents them from coming before the Commission for a public hearing at this time. Therefore, this gives the Commission an opportunity to devote a meeting to planning. The last time that there was a meeting devoted primarily to planning was in 1968, when BCDC was finishing the work on the Bay Plan. He said the McAteer-Petris Act requires that the Commission review and update the Bay Plan, and a meeting devoted to planning is overdue. The staff has organized a planning team that will make a thorough analysis and evaluation of the Bay Plan. This analysis will include a look at the accomplishments in implementing the Bay Plan such as control of fill, providing new public access and recreation areas. The evaluation will be concerned with the need for updating and revision and a public participation program. Therefore, at our November 1 meeting the staff will present a status report and discuss recommended procedures for the planning effort during the next year. The staff will request Commissioner's comments and general guidance. Commissioners will receive in the mail before the November 1 meeting a general outline of the proposed planning effort and he encouraged

them to review the outline and come prepared to give the staff guidance. Chairman Evers pointed out this type of meeting may not be as controversial as public hearings on permit applications, but it is extremely important and necessary if BCDC is to grow and be responsive to the changing conditions of San Francisco Bay. This will not be a public hearing as there will be a discussion on planning. However, if anyone from the public cares to make a comment he will be given an opportunity to do so.

c. SB 1316 (Petris) and AB 1804 (Knox). Chairman Evers reported that SB 1316, the Bill that strengthens the Commission's enforcement power, and AB 1804 (Knox) the Bill that would require any person claiming grandfather rights to place fill in the Bay, to file a claim with the Commission, have both passed the Legislature and have been signed by the Governor. These Bills will be effective after the first of next year. There are also two other Bills that affect our jurisdiction which have been signed by the Governor; one is the authorization for a park in the Candlestick Point area, and the other is the Bill that clarified the BCDC's and the Coastal Zone Commission's jurisdiction. Therefore, at the November 1 meeting in addition to the planning discussions the staff will report on these Bills and present a recommended course of action to be taken in preparation of the change to the BCDC regulations to implement these new laws.

d. BCDC's San Francisco Waterfront Advisory Committee. The San Francisco Waterfront Advisory Committee held its regular meeting on Monday, September 17, and continued its parcel-by-parcel review of the waterfront. The review began at the south end of the waterfront at Hunter's Point, and it has now progressed past the Central Basin. Committee members are presently discussing the area around Piers 54 to 64. Good progress is being made and there is a real cooperative spirit being shown by all participating in the effort.

e. Is BCDC Accomplishing its Task? Mr. Evers said that when Charles Roberts appeared on "Head On" (Channel 2 - Sunday, September 23, 1973), there were questions asked of him with the thrust of "Why is the BCDC still allowing fill when the law, presumably, prevents fill?" Chairman Evers said he wanted to reply to that type of question with the following statement:

"A question that has been asked recently is why filling of the Bay still continues even though there is a BCDC. The short answer is that the McAteer-Petris Act and the Bay Plan were written to regulate filling of the Bay and not to stop all further fill. Recognizing that the Bay is an economic, as well as a natural resource, the Legislature set out in the McAteer-Petris Act a limited number of water-oriented uses for which the Commission could allow some fill. More importantly, however, the Legislature made it clear that the Bay is a public resource, though much of it is privately owned, and the McAteer-Petris Act stated that any fill in the Bay, for whatever purpose, 'should be authorized only when the public benefits from fill clearly exceed public detriment from the loss of water areas.'

"The real question then should be 'Is the BCDC accomplishing its task? Is BCDC adequately protecting the public interest in the Bay as the Legislature directed?' To answer these questions, let me use some statistics. The best information that we have is that between 1850 and 1940, the rate of diking and filling in the Bay was about 1,500 acres per year. Between 1940 and about the time BCDC came into being in 1965, the rate increased to about 2,300 acres per year. These are averages and, of course, do not reflect actual filling and diking during any given year, but we feel that it is reasonable to say the rate of filling when BCDC came into being was about 2,300 acres per year.

"What has happened since then? During the years when the Bay Plan was being prepared, the Commission authorized an average of 94 acres of fill per year, which represented a significant drop in the rate up to that time. Moreover, the rate dropped still further, to 29 acres per year, after the completion of the Bay Plan in 1969 and the adoption of the amendments to the McAteer-Petris Act. And the rate appears to be still declining. In 1972, the Commission authorized only five acres of fill, four of which were for improving shoreline appearance and public access and which included a dedication of 365 acres of high-quality marsh for permanent preservation at no cost to the public. Of course, the rate of

fill in the future could fluctuate as the result of a large fill project for either an airport or a port, both of which are water-oriented uses and which represent, by far, the largest percentage of the fill previously authorized. In fact, 92% of the projects authorized have been for public uses, and only 8% for private use.

"The amount of fill authorized is not necessarily the same as the amount of fill that has actually occurred. Though about 480 acres of fill was authorized up through 1972, as far as we can tell, only about 330 acres of the Bay have actually been filled. This is less than one-half of the last large fill project prior to BCDC, Bay Farm Island. The 150-acre difference between the amount of fill authorized and the amount completed is the filling of the Seaplane Harbor at San Francisco Airport, which it now appears may not take place.

"Let me sum up by saying that, in the judgment of the staff, the Commission, operating under the San Francisco Bay Plan and the McAteer-Petris Act, has stopped large-scale filling of the Bay and brought further filling under strict public control. The next step is to move forward to implement other recommendations of the Bay Plan. Some of the more important of these are: the permanent preservation of areas of critical concern to the Bay, such as the marshlands, managed wetlands and the salt ponds; the opening of public access to the Bay on a broader than project-to-project basis; recreational development along the shoreline; and similar matters. In short, through BCDC regulation, uncoordinated piecemeal filling of the Bay has stopped; it is now time to develop ways to encourage desirable things to happen. We hope to make recommendations to the Commission in this regard in the course of the revision of the Bay Plan, which we will be reporting to you shortly."

f. Litigation Report. Mr. E. Clement Shute, Attorney General's office, said it was appropriate that the Commission should be talking about planning today because the California Supreme Court last week handed down a decision (6 to 0) in Selby vs. the City of San Buenaventura which removed the cloud on the planning process which had been created by some other decision. It holds that a public agency can adopt plans including designations of private property with potential public uses without causing the taking of private property. Mr. Shute said this should strengthen the position of the Commission and other public agencies in developing the Comprehensive Plan.

Mr. Michael Wilmar, BCDC staff, commented that the brief for the Attorney General's office in this extremely important case was prepared by Mr. Shute and he felt that Mr. Shute deserved a great deal of credit.

g. Mobile Oil - Bear Island Trade. Mr. Richard Golden of the State Lands Commission gave a brief report on the Mobile Oil--Bear Island Trade. He said that early in the history of the state, certain lands were sold to private ownership in and around the Bay. However, State Lands has held the position that the state had certain litigable rights over these lands. As a result of the value of the litigable rights, and with the assistance of the Attorney General's office, State Lands was able to negotiate for about 500+ acres of land which was identified by the Department of Fish and Game and the U. S. Bureau of Fish and Wildlife as being particularly significant in terms of wildlife and fish values. He said that State Lands feels that as a result of this, plus the donation by Movile Oil to the public domain of adjacent lands, a significant step has been made in returning valuable wildlife lands to state ownership.

6. Executive Director's Report.

a. Administrative Permits. Mr. Roberts said the list of Administrative Permits filed since the last meeting was mailed to Commissioners in a memorandum dated September 21, 1973. He verbally added two more applications to the list.

| Applicant | Filed | 90th Day | Project Description |
|---|---|---|---|
| San Francisco International Airport M73-107 | 9/27/73 | 12/26/73 | At the San Francisco International Airport at various locations to (1) dredge approximately 10,000 cubic yards of material from time to time over a three-year period at or near the termination of 10 existing storm water outfall pipes; and (2) deposit the dredged material at an upland location outside the Commission's jurisdiction. |
| San Quentin Disposal Site M73-95 | 10/3/73 | 1/4/74 | In east San Rafael near the Richmond-San Rafael Bridge to maintain an existing 1,700-foot long levee by placing 3,000 cubic yards of earth on the top and rip-rapping the bayward face. |

b. Annual Report of Public Acquisition of Private Property Within BCDC's Jurisdiction. Mr. Roberts said the McAteer-Petris Act requires that the Commission annually prepare a report to the Governor and the Legislature on the public acquisition of privately-owned properties within the area of BCDC jurisdiction. The staff began the necessary background work on this year's report in July, and Mr. Roberts recommended that the matter be set for public hearing at the regular Commission meeting on November 1.

Chairman Evers said, without objection, the public hearing on the acquisition report would be set for November 1. There was no objection.

c. Permit No. 5-68--San Francisco International Airport. Mr. Roberts announced, with pleasure, that BCDC has recently been advised by the San Francisco Airport that they have set aside, for the time-being, their plans to fill approximately 126 acres of the Bay in what is now the Seaplane Harbor adjacent to the Airport. This project alone constituted almost 25% of the fill the Commission has authorized since it came into existence in 1965.

Mr. Roberts recapitulated the Commission issued a permit for this project back in 1968, before the Plan was complete and the new amendments to the McAteer-Petris Act enacted, and it has been extended administratively several times because the project could not be started for reasons beyond the Airport's control. However, the Airport recently took another look at the situation and decided not to ask for any further extensions of time for the project, and the Permit for this work expired on October 1.

Mr. Roberts emphasized two additional points. The 1968 permit also included an adjacent area of about 26 acres. Some of this filling has taken place pursuant to Permit No. 5-68, and the Airport has stated there is a need to complete the project. However, they have agreed to present their case to the Commission as part of an application for a major extension of time to the 1968 permit. In the meantime, no further filling will take place.

Mr. Roberts continued the Airport has also indicated that the need may arise in the future for the additional land area that would be provided by filling the Seaplane Harbor, an Airport use is a water-related use for which some fill can be allowed under the McAteer-Petris Act and the Bay Plan. The Airport understands that any future fill would require a new BCDC permit and have asked only that the Commission give their needs full and fair consideration at that time.

7. Presentation on the City of Emeryville's Plans for Further Development of its Marina and Baylands Area, by Edward M. Steffani, City Engineer of Emeryville. Mr. Steffani gave a presentation on the history of the City of Emeryville's dealings with BCDC. By way of aerial photographs, he pointed out each phase of the development. He said that a few months ago when the City was before the Commission with an application to construct a breakwater extension, the Commissioners indicated a desire to see the overall picture of what has been happening in the Emeryville area. BCDC Permit No. 1-70 allowed the construction of a marina of 300 berths. There are 250 berths now completed and the additional 50 will be added soon. He said a timber breakwater has been constructed and a breakwater extension is partially completed. Also completed to date are the Tia Maria Restaurant a portion of the fuel dock and some parking. To the east of the marina there is the Lathrop-McCloskey development--the Watergate Apartments. This includes the Trader Vic's Restaurant, and the six residential apartment buildings, five of which have been completed. There will be a total of approximately 1,260 units when that sixth building is completed. Mr. Steffani said the City Hall and a large open area are to the south of the Watergate Apartments and to the east is the Holiday Inn Tower and the Charlie Brown Restaurant.

Mr. Steffani then proceeded to explain plans for the future. First, in the marina (in addition to the 50 berths) there is to be constructed a parking area, a bait shop, and the Anchorage (a platform structure covering 3 acres, with 100 boat berths, and service by a public tram). The Anchorage has given a 17-acre area to the City and Nature Conservancy. The Anchorage also agreed to convey to the City approximately 25 acres for use as marina expansion. The Anchorage is an eight-storied, combination hotel, restaurants and retail specialty shopping area. In the Watergate commercial center to the east of the apartments there are plans for three more office towers identical to the tower that exists now. There will be a two-level parking structure covering all of what is now an open parking lot. The top of this parking structure will be a landscaped area; no cars will be parked on the roof. A heliport is planned to be located in front of the parking structure. The Powell Street Interchange is being improved by the State at the present time and the City has plans for a farmers' market just east of the freeway.

Turning to the water area, Emeryville suggests in its open-space plan, that the area south of Powell Street, owned by Santa Fe Railroad, be conveyed to the public as open space. It is all water except for the shoreline east of the City Hall. He said it was very difficult to place a value on this open space. The land around the Holiday Inn is worth about $10 per square foot (approximately $500,000 per acre and there are approximately 7 acres). All total, the shoreline east of the City Hall is worth approximately $3,500,000. The City paid about $.30 per square foot for the City Hall site; $.30/square foot is about $15,000 per acre.

Therefore Emeryville is suggesting that an area worth approximately $7,000,000 be given to the public in exchange for something. That something is the problem, he concluded. There may be a way a water area north of the Emeryville fill can be developed. This could be determined by a three-way negotiation between BCDC, Santa Fe and the City.

Mr. Thompson asked what the open-space plan contemplates on the shoreline. Mr. Steffani said the City would like to develop the shoreline as a public park. The City anticipates the preservation of the marsh area by cleaning it up and providing access.

Commissioner Houghteling asked if the adoption of an open-space plan requires an Environmental Impact Report and if it does would it be circulated to the BCDC staff. Mr. Steffani said they had not prepared an EIR. He added that the City Attorney believed that one was not necessary. Commissioner Houghteling said he thought that the reason for the legislation allowing a 6-month delay in the filing of an open-space plan was to give jurisdictions time to go through the EIR process. Commissioner Houghteling added that since most of Emeryville's planning area is in BCDC's jurisdiction that a cooperative staff effort or a DEIR would be needed. Mr. Steffani said it was obvious that before a project could be limited, an EIR would have to be prepared. Commissioner Houghteling said that there was a difference between a project EIR and a plan EIR. It was the plan EIR that concerned him. Mr. Steffani said that zoning does require the preparation of an EIR. Mr. Shute then suggested that Emeryville's City Attorney read the State guidelines implementing the Environmental

Quality Act because they expressly provide that planning elements can be subjected to or required to prepare an EIR prior to adoption. The guidelines included this provision on the theory that the adoption of a plan sets in motion the prospect of physical development and it is best to evaluate those possibilities in the planning process rather than at the time the developers submit an application for a specific project. He added that perhaps Emeryville would want to look at the use of the EIR process as part of planning since there may be some question as to the validity of a plan adopted without an EIR or a Negative Declaration.

Commissioner Raggio said knowing that Emeryville has an open-space plan without an EIR and not doing anything about it might cause an estoppel. Mr. Shute said he would not be concerned about an estoppel because the application will be from a private applicant, Santa Fe or someone else, to whom the Commission has not made any sort of representations. He said he believed it best to put the City on notice that there is this problem and something should be done about it.

Commissioner Cooper asked if Emeryville had completed all its projects that were under the "grandfather clause." Mr. Steffani said there were no other projects. Commissioner Cooper asked if the new law (SB 1316, Petris) covered any additional grandfathered projects or should Emeryville and BCDC enter into some sort of Memorandum of Understanding in case someone challenges the law. Chairman Evers said the new law would make it mandatory that the City of Emeryville file by March 30, 1974, any additional grandfathered projects for BCDC's determination of the grandfather status. Mr. Cooper said that legislation can always be challenged at a later date and as long as Emeryville agrees, he thinks BCDC should at least consider an MOU with Emeryville that they have no more grandfathered projects.

Commissioner Cooper asked if it was possible for the Watergate developers to make a claim under the grandfather clause. Mr. Steffani said the legislation which made BCDC a permanent agency exempted Watergate, and only Watergate, from the 100-foot shoreline band. Mr. Michael Wilmar explained that Emeryville's exemption does not fall into the regular grandfather clause. Emeryville's exemption is limited to the shoreline band only and any projects that involve any further fill in the Bay would require a permit from the Commission.

Mr. Steffani next discussed potential proposals which do not have final approvals. He said the City had authorized the construction of 200 new berths in the area between the existing berths and the marina breakwater. The State Department of Navigation and Ocean Development has made a loan to the City to construct the berths but Emeryville does not have a permit from BCDC. They will be applying for one soon. A sailing-ship restaurant is proposed (The Ellen) and this will need a BCDC permit. A ferry terminal is proposed and also some sort of public transportation system to the BART station. In the property across the street from the Holiday Inn another structure similar to the Holiday Inn is proposed. He indicated the possibility of a future freeway, which would be an expansion of the existing East-Shore Freeway. He said there are also plans for an additional 300 berths in the marina but these have not been approved by the City Council.

Commissioner Bruno asked if they had any report on siltation in the marina. Mr. Steffani said no, but the area is shallow and will require dredging. He said it was about 4 feet at low tide and would have to be dredged to about 7 feet.

Chairman Evers asked if there was a problem with the depth for a ferry in the Bay outside the marina. Mr. Steffani responded yes; dredging would be required outside the marina and at the Anchorage also. (The Anchorage has applied to the Water Quality Control Board for a permit.) The City has an outgoing channel now but it is not deep enough even for the existing marina; it is only 5 feet at low tide. The City has applied to the Water Quality Control Board to dredge this channel 2 feet deeper. This dredging was included in BCDC Permit No. 1-70.

Commissioner St. Clair asked if the envisioned freeway plan included on- and off-ramps over the Bay. Mr. Steffani said the new freeway would require ramps that would be constructed over the Bay. Mr. Thompson asked if the berths proposed near Trader Vic's would have a problem with north-east winds and would the breakwater have to be extended.

Mr. Steffani said yes, there will be another section of breakwater required.

Commissioner Cooper said with regard to the open-space plan, does the plan assume that the Santa Fe Railroad will trade most of their Emeryville land in exchange for Emeryville, BCDC and the Corps of Engineers permits. Mr. Steffani said the plan does envision this. Commissioner Cooper said he would like a legal opinion on how far the Commission could go in such trading. Mr. Shute responded that any development has to comply with the law and the plan. Mr. Shute said it is not possible for BCDC to agree in advance to give certain permits in return for certain lands. Commissioner Cooper said Emeryville's plan implies that the agencies concerned should get together with the Santa Fe Railroad and work out a plan. He thought that in terms of BCDC going along with that, the Commission should look at the basic assumptions. Mr. Shute agreed that the idea of getting together and trying to work out a plan was good because it eliminated the problem of being surprised later; but he wanted to negate the idea that any deals could be made on the basis of the willingness of Santa Fe to dedicate lands.

Mr. Steffani then discussed potential projects which have received no approval. They included: new ramps at the Ashby Interchange, a shopping center, pedestrian and bicycle path along the shoreline, covered freeway with a parking structure and two platforms in the Bay with three buildings on each platform. Those platforms would be connected to the east side of the freeway by covering the freeway. A public beach was also included in the area between the two platforms.

8. Presentation on the Levels of Shellfish Bed Contamination Affecting BCDC Policies, by L. Thomas Tobin, BCDC's Staff Engineer.

Mr. Roberts introduced Mr. Tobin and explained that this was a presentation on which no action was required by the Commission. It was an informational presentation.

Mr. Tobin explained that implementation of the Bay Plan and the McAteer-Petris Act involves the staff in activities other than the permit and planning matters normally coming before the Commission. This report is on one of those matters. Although other agencies play a leading roll in the establishment of water quality standards and in the design of waste water treatment facilities, BCDC has a valid interest in protecting wildlife habitat and in the public use and enjoyment of the Bay, and thus must actively disseminate the Commission's policies. At some point in time, the Commission will be asked to act on permit applications for certain facilities. On a longer-term basis the Commission will include in the review of the Bay Plan an evaluation of the relevant finding and policies relating to shellfish.

Mr. Tobin said at one time shellfishing was a significant economic activity in San Francisco Bay. At its peak in 1892 over 15 million pounds of oysters and Bay shrimp were taken, primarily in the South Bay. Native oysters were so numerous that their shells supported a major cement industry and are still harvested for use as chicken grit. At the turn of the century, the Bay shrimp industry produced about 10 million pounds of shrimp in an industry that directly supported 1,500 people. Although the records are meager, the Bay also produced similarly great catches of clams and crabs for market during that period. The Bay was, and is now, one of the most productive bodies in the world. The decline and disappearance of the oyster, shrimp, and clam industry has been due to man's activities of filling the tidelands, Bay pollution, over fishing, and in the North Bay, deposition of silt unleashed by hydraulic mining in the Sierra.

Mr. Tobin then explained that in 1967, a biologist from the Department of Fish and Game walked the entire Bay shoreline to inventory shellfish beds. Of necessity he restricted his search to shallow water areas where he could walk without sinking over his knees in mud. He estimated 21 million adult soft-shell and Japanese littleneck clams flourish in the Bay. He also located five native oyster beds. If public health standards

were met, the existing production of clams would support more than 200,000 man-days of recreation per year. The potential also exists for raising or harvesting commercial quantities of clams and mussels. He said one of the San Francisco Bay Plan's stated goals is to maintain water quality in the Bay at levels sufficiently high to permit full public enjoyment and use of the Bay. The staff believes BCDC is committed to maintaining habitat and water quality conditions that will allow the taking of shellfish for human consumption.

Mr. Tobin reported that since 1932 the State Department of Public Health has had in effect a general permanent quarantine, prohibiting the taking and sale, or offering for sale of all clams, including soft-shell or mud clams from San Francisco Bay. This quarantine was established because shellfish may be contaminated with disease organisms originating primarily from the large number of sewage treatment plants discharging into the Bay. These conditions have been greatly improved by additional sewage treatment especially in the South Bay. He said that in response to a letter from the BCDC staff, Dr. Hodges, Deputy Director, Department of Health, explained that shellfish can be contaminated with pathogenic agents, heavy metals and pesticides, and that the sources of contaminents are from domestic sewage discharges, urban surface drainage, ocean-going and small boat vessel wastes, uptake of heavy metals in the muds, and their own toxins. The problem is made more acute by the shellfish's ability to concentrate these contaminents in their flesh at levels exceeding background levels.

Mr. Tobin said Dr. Hodges stated shellfish beds in much, if not all, of San Francisco Bay can be declared safe if effective and reliable sewage treatment is provided in conjunction with adequate dilution of treated water discharges, and if effective controls are established and enforced over vessel discharges. The effects of urban runoff are not clearly understood at this time but may result in seasonal limitations. And finally the degree of contamination by heavy metals is not completely known at this time, and the standards are not definite.

Public Health standards comply to the limits developed by the National Shellfish Sanitation Program for acceptable levels of contamination by coliform bacteria. Establishment of limits on heavy metals and pesticides is currently being undertaken by the Shellfish Workshop sponsored by the Department of Health, Education and Welfare.

Mr. Tobin also discussed the work being done by the Bay Area Sewerage Services Agency, and the California Regional Water Quality Control Board, San Francisco Region.

Mr. Tobin concluded by saying that although no action is recommended at this time, the Commission will eventually consider related permit and planning matters. Lifting the existing quarantine on shellfish consumption, and realizing the Bay Plan goals, will require effective and reliable sewage treatment.

Mr. Wolfe said the letter from the Department of Health referred to a study by the Environmental Protection Agency on heavy metal uptake and asked if Mr. Tobin was acquainted with that study. Mr. Tobin responded affirmatively. He said the study was done about 1 year ago; the report has not been issued at this time but is expected to be issued in about 1 month. About 75% of the shellfish beds have been sampled and were found to be polluted with bacteria.

9. Public Hearing and Vote on MOU 73-11. Request by the Department of the Navy to extend Pier 2 at the Alameda Naval Air Station an additional 210 feet over the Bay supported on 256 piles; replace two mooring dolphins, and remove an existing building from the pier.

Mr. Roberts said Commissioners have received a staff summary on the application and the Memorandum of Understanding which is a part of the official copy of these minutes on file in the Commission's office. Mr. Roberts said federal agencies are not subject to the State law, however the Navy has been working with the BCDC under the provisions of an executive order which directed cooperation and because of their desire to help protect and save the Bay. For some time, the Navy has been submitting requests for minor

MOU's; in this case, the request is for fill which requires a major MOU and the Commission's vote of approval. The area of the proposed fill is designated by the Bay Plan for Naval operations and states that some fill may be necessary. There is no public access because it is a sensitive area of Navy operations. The Navy states that an Environmental Impact Report is not required for this project.

Commander Montoya represented the Naval Facilities Command at San Bruno, California. He said their organization is responsible for the design and construction of all naval-shore facilities. Their command covers the entire west coast. He said the BCDC staff had adequately covered the technical aspects of the project. He added the project involves upgrading of the electrical systems and upgrading the steam systems, which will service the ships that will tie up, and extending the pier to provide more working space for contractors to perform work on the ships while they are at the Alameda pier. The concept is primarily human-oriented. Some indirect benefits are: 1) get the men off the ship, send them home when their ship is in port and thereby reduce the amount of waste being dumped in the Bay; and 2) by being able to turn off the ship's boilers and service the ship with shore facilities, thereby reducing air emissions.

Chairman Evers asked when they proposed completion of this job. Commander Montoya said the job should be completed in a year. Chairman Evers also asked if they had sewage pump-off facilities when the ships are berthed for long periods of time or do they continue to discharge in the Bay. Commander Montoya said they are presently continuing to discharge into the Bay. However, there is a five-year program (by 1978) to construct sewer facilities at all Navy piers so that there will be no further discharge into the Bay.

Commissioner Houghteling asked if dredging for aircraft carrier was part of this project. Commander Montoya answered that dredging was part of an annual maintenance and part of this project.

Chairman Evers asked if anyone else wished to speak to the application. There was no response.

MOTION: Commissioner Ogawa moved that the hearing be closed; seconded by Commissioner McCorquodale and unanimously approved.

MOTION: Commissioner Cooper moved that the application be approved subject to adding the condition that the agreement terminates unless the work is substantially complete within two years with a "yes" vote being a vote to grant the MOU and a "no" vote to deny; seconded by Commissioner Raggio. The roll call vote on the MOU was as follows: Yes: Commissioners: Boggess, Bruno, Cooper, Cuneo, Thompson, Fanning, Lepore, Godfrey, Golden, Heller, Houghteling, Jacobson, McCorquodale, Ogawa, Price, Raggio, St. Clair, Watkins, Wigger, Evers. No: 0. The motion was thus approved by a vote of 20 in favor, 0 against.

10. Old Business. None.

11. New Business. Commissioner Bruno said that he had noticed the condition of piles around the Bay in most cases are in very bad shape, particularly since the clean-up of the sewage problem. He wondered if the staff, in its spare time, could recommend in which cases the Commission should encourage the use of concrete piles.

Mr. Roberts responded that the staff is, to the maximum extent possible, recommending concrete piles. In some cases there are economic problems that have to be balanced, of course. Mr. Roberts continued a condition is now being put into all permits that piers which are no longer being used have to be removed. BCDC's general staff policy is to require concrete piles unless the applicant can prove that there is some reason he cannot use concrete piles.

12. Adjournment. Commissioner Ogawa moved for adjournment of the meeting; seconded by Commissioner Raggio and unanimously approved. The meeting was adjourned at 4:02 p.m. The next meeting of the Commission will be at 2:00 p.m., November 1, 1973, Room 1194, in the State Building, 455 Golden Gate Avenue, San Francisco.

Submitted,

Charles R. Roberts

CHARLES R. ROBERTS
Executive Director

SAN FRANCISCO BAY CONSERVATION AND DEVELOPMENT COMMISSION
30 Van Ness Avenue, San Francisco 557 - 3686

TO: All Commissioners and Alternates
FROM: Charles R. Roberts, Executive Director

SUBJECT: MINUTES OF MEETING OF NOVEMBER 1, 1973

1. Call to Order. The meeting of the San Francisco Bay Conservation and Development Commission was called to order by Chairman William D. Evers at 2:16 p.m. in the State Building, Room 1194, 455 Golden Gate Avenue, San Francisco, California.

2. Roll Call. Present: Chairman Evers, Vice-Chairman Watkins, Commissioners Bruno, Eagan (represented by Mr. Thompson), Fanning, Giacomini, Godfrey, Gladish (represented by Mr. Golden), Heller, Houghteling, Jacobson, Kopp, Lammie, Mineta, Price, Raggio, St. Clair, Wigger. Absent: Commissioners Boggess, Cooper, Cuneo, DeFalco, Feinstein, Hall, McCorquodale, Ogawa, Vella.

3. Minutes of October 4, 1973. Commissioner Fanning moved that the minutes of October 4 be approved; seconded by Commissioner Lammie, and unanimously approved.

4. Report of Chairman.

a. Next Meeting. Chairman Evers said the meeting for November 15 will be cancelled. The next meeting will be at 2:00 p.m., December 6, 1973, in the State Building, San Francisco. At that meeting there will be a progress report on the work of the San Francisco Waterfront Advisory Committee, and a public hearing and vote on changes to the Commission's Regulations, to implement SB 1316 and AB 1804. Mr. Evers added since the November 15 meeting will be cancelled, the staff is recommending that the public hearing and vote be held at the same meeting so that the Regulations will be in effect by the first of next year, the date the law is effective. Under State rules, any change to the Regulations becomes effective 30 days after approval by the Commission. There will also be a public hearing on the Larkspur Ferry Terminal.

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As directed by the Commission, Chairman Evers said appropriate certificates of appreciation have been prepared for the members of the Engineering Criteria Review Board and the Design Review Board. These certificates will be presented to the members of these two boards at the meeting on December 6.

b. Reception Planned at New BCDC Offices. Chairman Evers announced plans for a reception and lunch in the new BCDC offices, preceding the meeting on the 6th of December. The purpose of this reception will be threefold: (1) to show appreciation to the members of the Design Review and Engineering Criteria Review Boards, by having them as BCDC's guests at the luncheon; (2) to inaugurate the opening of the new offices of the Commission; and (3) to provide an opportunity for a social get-together at the beginning of the Christmas Season.

The new offices will be located at the same address and on the same floor, but in a new location in the building. There will be a light buffet lunch served at 12:30 p.m., and all Commissioners, Alternates, their spouses and the public are invited to attend.

Chairman Evers said the staff requests that reservations be made with Mrs. Sullivan (557-3686) prior to the 30th of November. The members of the Engineering Criteria Review Board and the Design Review Board will be guests of the Commission. There will be a charge for the luncheon and information on this will be furnished along with the meeting notice. The Chairman encouraged all to take part in this reception as it will afford an excellent opportunity to get to know each other, the member Boards, and the BCDC staff better.

c. Engineering Criteria Review Board Personnel Changes. Chairman Evers said it was necessary to discuss and approve personnel changes for the Engineering Criteria Review Board. Section 10298 of BCDC Regulations states that the Commission will appoint the Board and the Chairman of the Commission will designate the Chairman of the Board. Mr. Evers said Professor H. Bolton Seed, University of California, Berkeley, and Mr. Lloyd Cluff, Woodward-Lundgren and Associates, will complete the terms of their appointments to the Board. Chairman Evers said he will send letters expressing the Commission's gratitude and thanks for their work on the Board. The Engineering Criteria Review Board has nominated Mr. Rudy J. Dietrich, Sr. Vice President of Shannon and Wilson, Inc., and Mr. Alan L. O'Neill, Chief, Geology, Soils and Materials Branch, South Pacific Division, U. S. Army Corps of Engineers, to replace Professor Seed and Mr. Cluff on the Board.

Chairman Evers continued Mr. Frank McClure, Structural Engineer, McClure and Messinger, and George Simonds, Architects, Simonds, Dusel and Campini, have been nominated by the Board for reappointments for another three years. Mr. Frank McClure also has been nominated by the Board to be the Chairman for the next year, and Mr. Evers plans to so designate him upon this reappointment.

Chairman Evers recommended that the Commission confirm these appointments. MOTION: Commissioner Raggio moved that the Commission confirm the Engineering Criteria Review Board appointments; seconded by Commissioner Fanning and unanimously approved.

d. BCDC's San Francisco Waterfront Advisory Committee. Chairman Evers said the San Francisco Waterfront Advisory Committee has been making good progress and is beginning discussion of the area just north of the Bay Bridge. He said, as stated before, a progress report will be presented at the next Commission meeting.

5. Report of Executive Director.

a. Administrative Permits. Mr. Roberts said one list of Administrative Permits filed since the last meeting was mailed to the Commission in a memorandum dated October 23, 1973, and an additional listing, dated November 1, 1973, had been placed in the Commissioners' folders today. Chairman Evers asked if there were any questions regarding the Administrative Permit list and there was no response.

b. BCDC's Reception. Mr. Roberts extended an invitation to all Commissioners, Alternates, and their spouses to attend the reception on December 6. He added the Commission staff has been in cramped quarters for some time and is looking forward to acquiring the new offices. Mr. Roberts indicated that this will also give the space so badly needed to increase the staff to include a new permit analyst and a new secretary.

6. Public Hearing on Annual Report of Public Acquisition of Private Property Within BCDC's Jurisdiction. Section 66630.1 of the McAteer-Petris Act requires that the Commission make an annual report to the Governor and the Legislature on the public acquisition of private property within BCDC jurisdiction. The staff has made a survey of public agencies within the region and has prepared this year's report. Copies of the proposed report will be presented to the Commission for comments and approval.

Mr. Roberts gave a brief explanation of the report. He said the report is a requirement of the McAteer-Petris Act in which the staff researches and contacts all the agencies in the area to determine if they have any plans for purchase of lands witnin BCDC's area of concern. He outlined the information required by the McAteer-Petris Act to be included on a property to be listed in the report. The listing of property on the acquisition report indicates a local jurisdiction has plans to purchase that property and the Commission could deny a permit application for that reason. The property is listed for a three-year period. Chairman Evers said the report does not foreclose any jurisdiction from proceeding with condemnation or acquisition of any property not on the list.

Mr. Roberts said research had not found any local jurisdiction with plans for purchase of land developed to the point of providing the information required by the law. Therefore, the staff is suggesting a negative report this year. One piece of property was listed last year on the 1971-1975 acquisition list by Napa County Flood Control District in connection with the Flood Control project in Napa. Since there are no material changes, the staff recommends a negative report this year.

Commissioner Price said the City of Belvedere is in final negotiation for a parcel of property and asked should it not be included in the report. Mr. George Reed, BCDC staff, answered that BCDC did get a report from Belvedere indicating two properties which they were interested in. One proved to be outside of BCDC's jurisdiction; and, on the other, the estimated cost of the parcel was unknown, the source of the funds was undetermined (perhaps a general obligation bond issue) and when and how it would be acquired was unknown. Mr. Reed said that without this information the property could not be listed. Mr. Price said that the City of Belvedere plans to present this purchase at the Council meeting in December, and all the information should be available now. Chairman Evers said that since the report is not due until January, 1974, the staff should look into the City of Belvedere's negotiation and report if the parcel should be included in the report at the December 6 meeting. A vote on the report will be taken at that meeting.

Chairman Evers said he was not quite certain what purpose the report required by the McAteer-Petris Act was serving at this point. It seems to be an item that was added to the Act at the last minute and some of the court's holdings since the Act was passed probably make this a rather idle action. He suggested that the Commission may want to take a good look at the need to continue the report. Chairman Evers expressed a desire to have the Commission take a positive role in determining which parcels should be acquired within the BCDC jurisdiction.

Mr. Werner Schulz, Benicians for Environmental Action, said in regard to property which should be acquired that his organization was working on the purchase of the area called the Neptune Sub-Division. He said it was about 50 acres of shoreline which has been dedicated as open space in the Master Plan since May 17, 1966. He said Supervisor Godfrey had supported the purshase some years ago. He said he believed the Commission should include the parcel in the report because Benicians for Environmental Action have been working diligently to get some money together to buy the property.

Chairman Evers asked Commissioner Godfrey if the County had taken any action on this property. Commissioner Godfrey said the County Board of Supervisors had agreed to put $50,000 into a fund to acquire this piece of property but there had been a referendum on the matter and the people voted down acquiring the property as a park. He indicated that there is probably a change in attitude in Benicia now and he agreed that this was something that should be looked into. Chairman Evers asked the staff to look into including this property in the report.

Chairman Evers asked if anyone else wished to speak to the issue and there was no response.

MOTION: It was moved by Commissioner Mineta that the public hearing be closed; seconded by Commissioner Fanning and unanimously approved.

7. SB 1316 (Petris) and AB 1804 (Knox). SB 1316 (Petris) strengthens the Commission's administrative enforcement powers, and AB 1804 (Knox) requires any claims of "grandfather" rights under the McAteer-Petris Act for further fill in the Bay to be filed with the Commission within a specified time, or be lost. Both bills have now passed the Legislature and have been signed by the Governor. In anticipation of this legislation going into effect at the beginning of next year, the staff over the next two months will be proposing new Commission procedures to process exemption claims and to handle enforcement matters. At this meeting, the staff will present an analysis of the new legislation, together with its implications for the Commission, and a preliminary outline of the changes in procedures that will be proposed in more detail in the near future.

Mr. Michael Wilmar, BCDC staff, referred to the memorandum sent to Commissioners covering in some detail the provisions of both the new bills which have been added to the McAteer-Petris Act. Regarding SB 1316, Mr. Wilmar said that from the standpoint of the Commission, large-scale unpermitted filling is pretty much a thing of the past now. Both the permit process and the availability of existing enforcement powers has been sufficient to bring that kind of fill under regulatory control. However, there remains the problem of small-scale fill which is costly and time consuming to control by court action. There is a big problem with cumulative small-scale filling. This type of filling cannot be dealt with by after-the-fact enforcement. To stop this filling, the Commission needs the ability to require land owners to take preventive action such as fences, signs, etc. In many cases that has been done voluntarily but the only way to enforce such actions was to go to court. SB 1316 incorporates into the McAteer-Petris Act enforcement provisions modeled on the Porter-Cologne Water Quality Control Act which allows the Regional Water Quality Control Board to issue cease and desist orders requiring compliance. The Executive Director can issue temporary cease and desist orders good for 30 days to stop activities that may be detrimental to the Bay and the Commission can issue permanent cease and desist orders. Mr. Wilmar said basically the provisions of the new law give the Executive Director the power to issue temporary cease and desist orders and gives the Commission the power to issue permanent cease and desist orders which can require that certain activities stop, that illegal fill be removed, and it also allows the Commission to set conditions on the cease and desist orders that require applicants to come in for permits within a specified period of time. There is a fine for violation of cease and desist orders which is identical to the fine in the Porter-Cologne Act which is set by the courts and cannot exceed $6,000 per day per occurrence. The Commission's cease and desist orders require a public hearing.

Another problem which has been with the Commission since the McAteer-Petris Act was passed has been the grandfather clauses, in particular, grandfather projects which involve further fill in the Bay. Under AB 1804, anyone who ascerts grandfather claims for further fill in the Bay and who have not received a determination from the Commission in writing that they do have a grandfather fill project must file a claim with the Commission between January 1, 1974, and April 1, 1974. The Commission will determine whether an exemption claim exists and if so, its extent. In the past, there was no clear-cut way of resolving exemption claims except by going to court. This change should correct that problem because if a claim is not filed all further grandfather claims will be cut off and the Commission will not have to deal with these issues in the future.

The staff is now working on regulations to implement these changes. The regulations should be available in about two weeks and will be mailed to the Commissioners for review. The staff recommends that the Commission set December 6 as the date for a public hearing on the proposed regulations.

Commissioner Kopp asked for clarification of the mechanism for determination of a grandfather claim. Mr. Wilmar said the Commission would hold a public hearing to do two things: (1) to define what the project was; and (2) to decide whether or not it did fall within the exemption provisions. Commissioner Kopp asked how would this change or differ from the Commission's present procedure. Mr. Wilmar responded the Commission did not have any procedure for grandfather claims. In tying the two new bills together as part of the McAteer-Petris Act, Commissioner Kopp said it appeared if someone fills without submitting an exemption claim to the Commission, the Commission would be authorized to issue a cease and desist order. Mr. Wilmar agreed and added that the Commission could also determine the merits of any exemption claim during the proceedings on the cease and desist order. Commissioner Kopp said this was significant legislation.

Commissioner St. Clair said he wanted to be sure he understood what the Commission would do. He asked would the Commission be defining the claim as far as the validity of the claim is concerned or would the Commission actually get involved in defining the project. Mr. Wilmar said the Commission would be doing both. Commissioner St. Clair asked if this would also include diked salt ponds. Mr. Wilmar responded affirmatively.

Mr. Wilmar said, under the law, the Commission is to take reasonable measure to assure that prospective claimants have notice of the need to file exemption claims with the Commission. He said the staff is going through the files now to identify those projects where exemption claims have been asserted, but which may have become dormant, to give those people notice. The staff will also take advantage of newspaper advertising to provide proper notification.

Mr. Thompson asked if it was the intention of the Commission to have one hearing on this before adopting the regulations. Mr. Wilmar said yes. Chairman Evers added it was also necessary if the Commission wanted to have the regulations complete by January 1, when the law goes into effect. Mr. Thompson emphasized the importance of getting the public notification underway as soon as possible.

Mr. Wilmar said Senator Petris and Assemblyman Knox deserved a great deal of credit for their help in getting those bills through the legislature.

Chairman Evers asked if anyone wished to speak to the issue and there was no response. MOTION: Commissioner Mineta moved that the public hearing on the regulations be set for December 6; seconded by Mr. Thompson and unanimously approved.

8. Bay Plan Revision Program. The McAteer-Petris Act requires that the Commission review and update the Bay Plan. The staff is proposing a two- to three-year program to accomplish this. The first part of this program will be an evaluation of the Plan to date, together with implementation of a citizen participation program. The staff will present a status report and discuss procedures for the planning effort during the next year, for the Commission's comments and general guidance.

Mr. Charles Roberts said the staff is asking the Commission to consider approaches to Bay Plan revision. He said the staff would like the Commission to consider whether revision of the Bay Plan should begin immediately or whether an evaluation of the Bay Plan should be done first to determine the scope and approach to Plan revision. The staff recommends an evaluation program, to be completed by June, 1974.

Mr. Stanley Euston, BCDC staff, gave a presentation on the proposed Bay Plan evaluation and revision. Mr. Euston began by saying that there have been some substantial changes in data since preparation of the Bay Plan in 1966. There have also been many studies conducted about the Bay and new trends have developed. BCDC cannot remain static and, in fact, the McAteer-Petris Act requires periodic review and update of the Plan. The staff has come to the conclusion that there are two basic alternatives which would meet the necessary requirements: (1) immediately begin an update--"incremental" approach, to look at one policy at a time; and (2) an evaluation of BCDC experience to date, leading to a more comprehensive plan revision program. The evaluation will be a thorough analysis of the Plan to determine where BCDC has been successful and where less successful. This would allow for a comprehensive review, and therefore a comprehensive approach to the Plan revision. It would give the BCDC a unique opportunity for a candid self-evaluation. Mr. Euston said the staff proposes an evaluation during the next eight-month period. The evaluation would include both an analysis of the implementation as well as analysis of the substance of Plan policies, objectives, and recommendations. Mr. Euston explained that the McAteer-Petris Act established a regulatory system to achieve Bay Plan objectives, policies and recommendations. Since the regulatory system operates through permits, the staff will evaluate past permits and determine just how effective the permit system has been in (a) controlling fill; and (b) achieving public access. How much fill, what type of fill, and how this achieves the policies and goals of the Plan will be studied along with the quality and location of public access.

The staff will also be looking at the geographical extent of BCDC's jurisdiction and the effects of that jurisdiction on implementation of Plan goals. For example, does the 100-foot shoreline band help or hinder Plan implementation. There will be great emphasis throughout the evaluation on the problems of achieving positive goals for shoreline improvement and public access in the Plan. The staff will also review the influence of the Bay

Plan on other agencies' plans and policies. Many Bay Plan recommendations require implementation by other agencies, so the actions of these agencies are highly important to BCDC. The role of special area plans will also be explored in the evaluation. Mr. Euston explained that the Plan policies and recommendations should be reviewed in light of changes in population and economic trends. A look will be taken at the interrelations of policies and how the Plan policies compliment or conflict with one another. Also, an evaluation of public participation in the planning will be considered. The result of the evaluation will hopefully give BCDC an awareness of the effectiveness of the Plan and its implementation. BCDC should then have the necessary information on the needs: scope and approaches to improving the Plan through revision.

Mr. Euston said periodic reports on the evaluation will be made to the Commission beginning early next year. The staff will review its findings with the Commission and hopefully some tentative conclusions can result. A completed evaluation will be published and approved by the Commission in June or July of 1974. After the evaluation is complete, the staff will recommend to the Commission a detailed approach to revise the Plan. It is tentatively scheduled that the "second generation" Bay Plan will be complete at the end of 1976.

Commissioner Lammie proposed two additional items for consideration in the evaluation. He said it might be helpful to include a compendium of policies and criteria used by the various regulatory agencies around the Bay. Commissioner Lammie said that after BCDC takes action on a permit application, the project will be exposed to a broad range of agencies (particularly those at the federal level). Criteria used by the agencies is not always consistent with the BCDC criteria.

Commissioner Lammie's second suggestion was that in evaluating what BCDC has done, it is not enough to just look at what BCDC has done in the aggregate (numbers of permits, numbers of acres), but more important is the evolution in the BCDC policy over the years. He said that now and then when one comes across permits which were approved in the early days of BCDC, back in the days of clouded jurisdiction, he thought there was a bit of bargaining involved. There were things approved that subsequently would not be approved. He said as BCDC gets into the more controversial actions, there were permits approved by BCDC that, when reviewed by other agencies, are significantly altered in character. The evaluation of what BCDC approves is not a legitimate measure of what is being done on the Bay. An evaluation of the modification and evolution of these permits might be interesting in showing what happened to permits after they had been granted by BCDC.

Commissioner Houghteling said it seems that the staff is proposing to spend a great deal of time figuring out a yardstick to measure past BCDC performance. He said that was not the best way to look to the future. He did not feel the necessity to go back and evaluate the Plan. He felt the staff should begin the study based on present conditions rather than to go back over a long period. Mr. Euston responded that the evaluation would be based on present conditions but the study of specific problems would look at the entire scope.

Chairman Evers said it is time the BCDC really gets into self-evaluation and he had strong feelings about accentuating positive planning. BCDC may be falling down in providing leadership to local communities in planning for better utilization of the Bay and public access. He said that BCDC should be sure that the law and regulations are not hindering better use of the Bay.

Chairman Evers said he had qualms about the time element. He felt that 3 years was a long time to spend on the revision. He suggested that the staff should determine how much the time could be reduced. Commissioner Jacobson said she felt that three years was a long time to spend on revising the Bay Plan and felt that the time could be shortened. Mr. Evers responded that he did not want to put an unfair job on the staff but he felt that there would be a better, more reflective and comprehensive report if it is done in a fairly manageable time period of less than three years.

Chairman Evers suggested that the Commission adopt the recommendation for now and since the staff will be reporting frequently on the progress of the planning, the Commission can determine during the evaluation the timing of the revision. MOTION: Commissioner St. Clair moved to accept the recommendation of the staff, subject to further revision by the Commission; seconded by Commissioner Price and approved by a voice vote by the Commission with one dissenting vote.

9. Old Business. Commissioner Godfrey asked Mr. Roberts how much time the staff utilizes in preparing the administrative permit list. If in preparing the listing there is an unnecessary use of manpower, perhaps that list could be eliminated, especially since no one has raised an objection to any permit granted. Mr. Roberts indicated the time used in preparing the list was not great enough to justify eliminating the procedure.

10. New Business. None.

11. Adjournment. Commissioner Raggio moved for adjournment of the meeting; seconded by Commissioner Fanning and unanimously approved. The meeting was adjourned at 3:31 p.m. The next meeting of the Commission will be at 2:00 p.m., December 6, 1973, Room 1194 in the State Building, 455 Golden Gate Avenue, San Francisco.

Submitted,

Charles R. Roberts

CHARLES R. ROBERTS
Executive Director

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SAN FRANCISCO BAY CONSERVATION AND DEVELOPMENT COMMISSION
30 Van Ness Avenue, San Francisco 94102 557 - 3686

TO: All Commissioners and Alternates

FROM: Charles R. Roberts, Executive Director

SUBJECT: MINUTES OF MEETING OF DECEMBER 6, 1973

1. Call to Order. The meeting of the San Francisco Bay Conservation and Development Commission was called to order by Chairman William D. Evers at 2:04 p.m. in the State Building, Room 1194, 455 Golden Gate Avenue, San Francisco, California.

2. Roll Call. Present: Chairman Evers, Vice-Chairman Watkins, Commissioners Boggess, Bruno (represented by Mr. CmClure), Cuneo, Eagan (represented by Mr. Thompson), Fanning, Giacomini, Godfrey, Gladish (represented by Mr. Golden), Heller (represented by Mr. Becks), Houghteling, Jacobson, Kopp (represented by Dr. Ergina), Lammie (represented by Mr. Wolfe), McCorquodale, Price, Raggio, Wigger. Absent: Commissioners Cooper, DeFalco, Feinstein, Hall, Mineta, Ogawa, St. Clair, Vella.

3. Minutes of November 1, 1973. Commissioner Fanning moved that the nimutes of November 1 be approved; seconded by Commissioner McCorquodale, and unanimously approved.

4. Presentation of Certificates of Appreciation to the Engineering Criteria Review Board and the Design Review Board. Chairman Evers presented certificates of appreciation and gratitude to the members of its two active advisory boards for the Commission. In making the presentations, Chairman Evers recognized the dedication of time and talent made by each member in advising the Commission on matters of design, public access, and engineering.

The Design Review Board is a five-member panel consisting of three architects, a landscape architect, and an engineer, all of whom are professionally well-known in the Bay Area. The Board advises the Commission on the appearance and design of projects and the adequacy of provisions for public access.

The Engineering Criteria Review Board is composed of eleven seismic safety experts, leaders in the fields of seismology, geology, civil and structural engineering, and architecture. This Board advises the Commission on the seismic safety of proposed fill projects.

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Members of the Design Review Board, honored today are:

Edward C. Bassett, architect, Skidmore, Owings & Merrill, San Francisco (absent)
Garrett Eckbo, landscape architect, San Francisco
Hans A. Feibusch, engineer, Environmental Impact Planning Corporation, San Francisco
William H. Liskamm, architect-urban planner, San Francisco
Allan M. Walter, architect, Allan M. Walter & Associates, Inc., San Jose (absent)

Members of the Engineering Criteria Review Board, including two members who recently resigned are:

Lloyd Cluff, geologist, Woodward-Lundgren & Associates, Oakland (absent)
Henry J. Degenkolb, structural engineer, H. J. Degenkolb & Associates, San Francisco (absent)
Rudy Dietrich, soils engineer, Shannon and Wilson, Inc., Burlingame (absent)
George O. Gates, geologist, San Mateo (absent)
Frank E. McClure, structural engineer, McClure & Messinger, Oakland

William W. Moore, soils engineer, Dames & Moore, San Francisco (absent)
Dr. Gordon B. Oakeshott, geologist, Citrus Heights (absent)
Alan L. O'Neill, geologist, U. S. Army Corps of Engineers, San Francisco
Henry E. Pape, Jr., civil engineer, U. S. Army Corps of Engineers, San Francisco
Dr. Joseph Penzien, structural engineer, Earthquake Engineering Research Center, University of California, Berkeley
Professor H. Bolton Seed, soils engineer, College of Engineering, University of California, Berkeley
Professor George P. Simonds, architect, Anderson, Simonds, Dusel and Campini, Oakland
Richard Woodward, soils engineer, Lafayette (absent)

On behalf of the Engineering Criteria Review Board, Mr. McClure thanked the Commission for the resolutions of gratitude. He said that Messrs. Cluff and Degenkolb were in Managua at an Earthquake Engineering Conference and Mr. Moore was in Japan. He expressed regret that the other absent members of the Board were unable to attend. Mr. McClure said that all members appreciate the opportunity to serve the Commission.

5. Report of Chairman.

a) Introductions. Chairman Evers introduced Mrs. Mary (Michael E.) Stickney, who has been appointed alternate to Mrs. Marcella (Ralph N.) Jacobson. He also introduced his wife, Mrs. Edwina (William D.) Evers.

b) Next Meeting. Chairman Evers said that the meeting for December 20 has been cancelled. The next meeting will be at 2:00 p.m. on January 3, 1974, in the State Building, San Francisco. At that meeting the Commission will consider an application form for claiming "Grandfather" rights under the amendment to the McAteer-Petris Act, and, if necessary, continue the public hearing on Application No. 22-73, Larkspur Ferry Terminal. There will also be a public hearing on the application No. 20-73, Dumbarton Replacement Bridge. At present, plans are to hold the hearing on this application in two parts: the first part will be in this room on January 3, 1974, and the second part will be held at a location near the bridge (perhaps Palo Alto) on January 17, 1974. There will be a bus tour of the west connecting road to the bridge during the meeting, on January 17, as part of the public hearing.

6. Presentation on the Progress of the San Francisco Waterfront Advisory Committee. Chairman Evers reported that since June, the BCDC San Francisco Waterfront Advisory Committee has been engaged in a difficult and important job. After a period of familiarizing itself with the waterfront, the Committee has proceeded directly to plan for that area, evaluating each parcel and pier, while wasting as little time as possible on general discussions and philosophical debates.

The idea was and is to gain mutual consensus on how best to use the San Francisco waterfront, particularly those areas under Port jurisdiction that lend themselves to non-maritime use.

The Committee has given special attention to resolving any conflicts that may involve the BCDC plan, City plans and Port interests. At the same time, representatives of conservation groups, neighborhood organizations and commercial interests have played an important role in Committee deliberations. The amount of conflict to date has been surprisingly little, though the Committee has yet to tackle some of the more contested areas on the northern waterfront. Yet it is fair to say that there does seem to be growing awareness among all parties that the San Francisco Waterfront can serve as both a great public amenity and also provide attractive non-maritime uses that return adequate income to the Port.

The question of waterfront freeways has been an important concern to the Committee, Mr. Evers continued. Its attention was early focused on this issue when it became apparent

that waterfront land use is so directly tied to the visual and physical barrier of existing and proposed freeways. Committee plans will include options both with and without the existing Embarcadero Freeway, and with and without the proposed extension of I-280 along the waterfront south of the Bay Bridge.

The Fisherman's Wharf area is also a critical location; the BCDC Advisory Committee is following closely the work of the Mayor's Committee to Preserve Fisherman's Wharf. This group will be presenting its plans to the Advisory Committee on December 21, 1973.

Non-State monies have been secured to hire an economic consultant to provide economic impact data to the Committee. The present schedule calls for tentative conclusions in January and final approval and presentation of the plan to BCDC in April, 1974.

Chairman Evers said he felt that this effort in special area plan has some lessons for the Commission. For one, special area plans are difficult and very time consuming but also, hopefully, very rewarding. It all depends largely upon the cooperation of the constituency of BCDC and the cooperation of the City of San Francisco. The Advisory Committee has no statutory standing other than being advisory to BCDC. This is really a citizens' effort to try to resolve a very complex problem. It will be a model of sorts for tackling the same sort of problems in other parts of the Bay.

7. Report of Executive Director.

a) Administrative Permits. Mr. Roberts said the Commission had received the listing of Administrative Permits filed since the last meeting in the form of two memoranda, one was dated November 30 and the other December 6, 1973. He asked if there were any questions or comments and there was no response.

b) Introductions. Mr. Roberts announced the hiring of three new staff members. First he introduced Mr. Robert Hickman, who joined the staff on the first of the month. Mr. Hickman is a Permit Analyst. He worked the last two years as a Planner in the Zoning Division of the Contra Costa County Planning Department. Prior to that he worked as a consultant and taught school in Wisconsin. His undergraduate work is in philosophy and his graduate work is in planning. He will be working in permits and enforcement. Next, he introduced the new Junior Planner, Ms. Ruth Koch, who will be on the Planning Staff. Lastly, he presented Ms. Ellen Johnck, Assistant Planner, who will be on the Joint Planning Team for Evaluation.

c) Dumbarton Bridge - Final Certified Environmental Impact Report. Mr. Roberts said at the beginning of January, the Commission will begin its review of the Dumbarton Bridge program. He announced that there were copies of the Certified Environmental Impact for the Commissioners.

Mr. Roberts requested that Mr. Wilmar, BCDC staff, comment on the new conflict of interest law. Mr. Wilmar said BCDC has recently learned that a conflict of interest statute which passed the Legislature during this session apparently applies to members of the Commission as well as to representatives of local government. He said the comprehensive disclosure law goes into effect in January, although the disclosure required does not have to be made until April. The staff will be sending the Commissioners a copy of the legislation together with a summary or analysis by the staff of the legislation prior to the January 3rd meeting.

8. Further Commission Consideration of Annual Report of Public Acquisition of Private Property within BCDC's Jurisdiction. Mr. Roberts reviewed the draft report considered by the Commission at the November 1 meeting. There were two suggestions for possible change; one was by Commissioner Price on property in Belvedere. Staff investigation revealed that this property is in the final stages of purchase and will probably be obtained before this report goes into effect in 1975. Therefore, a note which states that this property is being

purchased has been added to the report.

Commissioner Price said for the Commission's information the City of Belvedere had acquired the property as of December 3, 1973.

The second suggestion related to a parcel of property in Benicia. The use of this property as a park has been debated for some time; however, in a city election a few years ago, the matter failed to be approved by the voters. The matter is still being discussed; but it appears at the present time that the City has no plans to purchase this property. And the present owner is planning to develop the property. Therefore, the property should not be included in the report. Mr. Roberts said the staff recommends that the revised report, as shown on the back of the staff memorandum, be approved for forwarding to the Governor.

Commissioner Godfrey said on Tuesday night (December 4) the City Council in Benicia voted to study the making of a park on the property. They did not adopt a resolution to purchase the land, but took a stand to develop a park on the land and directed an investigation of how it should be financed. Mr. Roberts said that this information updates the status of the situation. He recommended that the Commission approve the report with the understanding that the staff will review the action taken by the Benicia City Council and include the information in an appropriate manner. MOTION: Commissioner Price moved for acceptance of the staff recommendation as explained by Mr. Charles Roberts; seconded by Commissioner Cuneo and unanimously approved.

9. Discussion of AB 2040 (Knox). Chairman Evers said a discussion of AB 2040 was before the Commission because Assemblyman Knox, Chairman of the Assembly Committee on Local Government, has requested that the Commission be represented at a hearing on December 14, 1973, and respond to some specific questions concerning AB 2040 as listed in a memorandum to Commissioners dated November 30, 1973. Chairman Evers explained the most controversial aspect of the Bill concerns not so much the establishment of the agency but just how it will be governed. This is a battle which has been going on for the past five or six years. One side includes those in favor of direct election and the other includes those who are in favor of constituent representation. There also are those who wish to have half-and-half, that is, one-half constituent and one-half directly elected. Assemblyman Knox has asked the Commission particularly what it thinks of the Denver Plan. In this plan there would be direct election, but only officeholders could run the first five years. At the end of five years, anyone could run.

The Commission is on record in the Bay Plan as favoring a multi-purpose regional agency with BCDC being a part of that agency. The Commission did vote in 1968 for a governing board composed of a combination of directly-elected members and appointed members. If the Commission were to reopen that subject, there would be need for public hearings and staff recommendations. The Chairman recommended avoiding that at this time. However, Chairman Evers said the Commission does owe Assemblyman Knox a response and that he plans to appear at the public hearing. Chairman Evers said that he was open to suggestions as to how to respond to Assemblyman Knox' inquiry. Chairman Evers suggested the Commission discuss the subject and then take a "straw vote" as to: (1) how many favor direct election; (2) how many favor constituent-type representation; (3) how many favor a combination; and (4) how many favor some sort of Denver Plan compromise. Chairman Evers said he would then testify that the Commission had not deliberated with public hearings in order to reach some conclusion; but, he would attest to the outcome of a vote taken of the members of the Commission in attendance at this meeting. He explained that this approach would draw upon the Commissioners' personal experiences in this field and would avoid the Commission as going on record in favor of one view.

Commissioner Biscomini recommended that the Commission simply vote on the four options. He said that many of the Commissioners (as supervisors) have been exposed to the issues at the local level and he felt it unnecessary to rehash all of their respective positions.

Mr. Thompson said the BCDC, in its Plan, may have recommended that it should be part of a regional government and he wondered if this was the regional government. He felt that question should be discussed. Mr. Evers said the Commission could discuss the question but not in time for the December 14 hearing. Chairman Evers said there were three questions recommended for discussion in the memorandum dated November 30, 1973. The second question is, "If BCDC is to become part of the Bay Area Regional Planning Agency, when should this absorption take place?" One option on this question would be "not at all." The Commission can take a straw vote and report to Assemblyman Knox that the results represents the expertise of the members of the Commission, unaided by any formal discussion or presentation. Chairman Evers asked if that was responsive to Mr. Thompson's comment and Mr. Thompson answered affirmatively.

Commissioner Boggess said that Assemblyman Knox is looking for support of the AB 2040 and if BCDC says it supports the Denver Plan, Mr. Knox will report to the legislature that BCDC supports AB 2040 under the Denver Plan. Chairman Evers emphasized that the Commission did not have time to have a hearing on the matter and to try to get a majority position. Chairman Evers recommended extending the courtesy of informing Assemblyman Knox' Committee of how the Commissioners felt themselves.

Commissioner Houghteling said he questioned the premise that BCDC is in favor of a regional authority, as indicated in the Bay Plan. The Legislature chose to set up a special agency to carry out the plan. Commissioner Houghteling said since the Legislature made that choice, wouldn't that preempt the other position of BCDC?

Chairman Evers read excerpts from page 35 of the Bay Plan ("A Regional Agency is Needed"):

> "The Commission recommends that a limited regional government be created for the Bay Area. A limited regional government would (1) avoid further fragmentation of regional responsibility by forestalling the proliferation of additional special-purpose districts, (2) be able to consider the overall needs of the region as a whole, and thus minimize wasteful duplication in regional development, and (3) attract broad public attention and thus help to insure public awareness of regional problems and needs. As one of its principal assignments, a limited regional government should be required to carry out the BCDC Plan for the Bay and shoreline."

Chairman Evers asked if Commissioner Houghteling's contention was that BCDC didn't recommend that a multi-purpose agency be created? Commissioner Houghteling answered that the Legislature responded to the transmittal of the Plan recommendation in 1969 by choosing a special-purpose agency. Commissioner Houghteling asked if this choice eliminated any BCDC position on a regional agency?

Mr. Clement Shute, Attorney General's Office, said the Legislature adopted the regulatory part of the Bay Plan only. He felt this matter was purely a matter of policy and depended on how the Commission wanted to interpret it.

Chairman Evers asked Commissioner Houghteling if he was recommending that the Commission start from scratch on this matter. Commissioner Houghteling responded no, but that he objected to the assumption that the Commission is on record that BCDC should be part of a multi-purpose regional agency. Chairman Evers said it is clear that the 1969 Commission recommended to the Legislature that the BCDC should be part of a limited regional government.

Commissioner Houghteling said that he was the Commission's representative on MTC (Metropolitan Transportation Commission) and that they were very much involved with AB 2040 and that they had not as yet taken a position on the Bill. They are waiting for the MTC Legislative Committee to come up with a recommendation on the Bill. The Chairman of MTC

will appear before Assemblyman Knox' Committee. The thrust of his comments will be that MTC has not taken a position and that there were some things of importance which Mr. Knox' Committee should consider, one being that the new agency should assume its responsibilities on a phase basis. Commissioner Houghteling said that MTC has not felt it necessary to take a position in response to Mr. Knox' Committee. Chairman Evers said it would appear that what MTC has done is to set in motion the machinery that will lead to a position in the future, and that this was an alternative for BCDC. If this Commission wants to review the issue of whether it favors being part of a multi-purpose regional agency, BCDC could set up the machinery to do this at future meetings.

Commissioner Boggess asked what, specifically, did Mr. Knox request the Commission to do. Mr. Evers responded by reading excerpts from a letter dated November 21, 1973, from Mr. Knox to Mr. Evers:

> "The principal unresolved political issue in AB 2040 is the issue of the governing body of the Regional Planning Agency. I am particularly interested in reactions to the so-called "Denver Plan" as a potential compromise for this difficult issue. An outline accompanying this letter lists specific questions about this approach upon which we would like your comments.
>
> "A second major issue is the number of existing regional agencies which might be absorbed by the new regional planning agency. As presently drafted, AB 2040 would absorb both BASSA and MTC by making the governing board of the regional planning agency the ex-officio governing board of these agencies. It has been suggested that this approach should be extended to other agencies with regional planning responsibilities - e.g., the Air Pollution Control District and BCDC. The outline accompanying this letter also includes specific questions in regards to this issue.
>
> "Finally, we are also concerned with criticism and questions about other provisions in AB 2040 which you feel may need revision or amendment."

Chairman Evers said he had very strong thoughts on this issue. He felt that a plan should go back to the Legislature in two years. There is the problem of should the members of the agency be full-time paid or volunteers like the ones on BCDC. There are problems of consolidation of staffs and problems as to what is local and what is regional which have not been thought through.

Commissioner Jacobson said that if a straw vote were taken, there would be a risk involved. Probably many of the Commissioners have not had the opportunity of studying the Knox Bill or considering the Denver Plan. If a vote were taken, it may give Mr. Knox some direction that the Commission may not have intended. Chairman Evers suggested the Commission vote on its procedures.

Chairman Evers asked how many of the Commissioners would be in favor of not considering this issue today but considering it over a period of meetings so that BCDC could formally respond to Knox' inquiry at a later date and announce at Mr. Knox' hearing that the Commission has not had sufficient time to consider this matter. The alternative would be to take a straw vote today. Chairman Evers asked for a show of hands. It was unanimously decided not to have straw votes but rather to set the machinery in motion to formally respond in the future.

Mr. Roberts recommended that the Commission not overlook item 5, c, on the staff memorandum of November 30, 1973, Subject: Special Hearing on AB 2040 (Knox) (Bay Area Regional Planning Agency). Item 5, c states, "If BCDC is not to become part of BARPA should a recommendation be made that the Bay Plan become the Plan for the Bay in AB 2040?"

MOTION: Commissioner McCorquodale moved that if BCDC is not to become part of BARPA, then a recommendation should be made that the Bay Plan become the Plan for the Bay in AB 2040; seconded by Commissioner Jacobson and unanimously approved.

10. Public Hearing and Vote on Changes to the Commission Regulations. AB 1311 (Petris) strengthens the Commission's administrative enforcement powers, and AB 1804 (Knox) requires any claims of "grandfather" rights under the McAteer-Petris Act for further fill in the Bay to be filed with the Commission within a specified time, or be lost. This legislation will be effective at the beginning of next year. The staff will propose new Commission procedures to process exemption claims and to handle enforcement matters. Since the November 15 meeting was cancelled, the staff recommends that the public hearing and vote be held the same day so that the new regulations will be in effect by the beginning of next year.

Chairman Evers asked Mr. Michael Wilmar, Deputy Director, to briefly summarize the remarks in the law relating to the preparation of the proposed regulation amendments. Mr. Wilmar referred to a staff memorandum dated November 30, 1973, sent to all Commissioners, a copy of which is a part of the official copy of these minutes on file in the Commission's office. Mr. Wilmar pointed out a couple of technical changes in the text. He referred to the proposed regulations, page 2, Regulation No. 10844, item (c), fourth line, the words "or is" should be inserted after the word "was." The second change referred to is on page 3, Regulation No. 10845, item (a), first line, add "form" after the word "claim;" third line, add the word "form" after the word "claim;" fourth line, delete the words "of exemption." In item (b), first line, delete the words "of exemption" and substitute the word "form" after the word "claim."

Commissioner Houghteling asked what vote it would take for the Commission to grant the exemption or to issue a cease and desist order and if there is a 90-day clock on this type of action. Mr. Wilmar responded that there was no 90-day clock on either claims of exemption or the cease and desist orders. Mr. Shute, in response to the first part of Mr. Houghteling's question, said no final opinion had been revealed regarding what the required vote should be and that is why it is not spelled out in the regulations. Mr. Shute did say, however, that it was his inclination that on matters of exemption, a 13-vote requirement would be necessary since exemptions are closely related to permit jurisdiction. He said on matters of cease and desist orders, possibly a majority vote of the quorum present would be required because that would be basically enforcement action. Chairman Evers asked Mr. Shute if he was going to render a formal opinion for the Commission. Mr. Shute responded, formal in the sense that he would recommend what the Commission should do.

Commissioner Houghteling referred to the proposed regulations, page 8, Regulation No. 11060, third line. He felt the word "may" should be deleted and that perhaps the word "shall" or "will" should be used in its place in regards to the Executive Director's referral of matters to the Attorney General's office when a determination is made that cease and desist orders are not being complied with. Mr. Wilmar explained that the purpose of leaving that regulation permissive rather than mandatory was to give the Executive Director the discretion to refer the matter to the Commission should he feel that something short of legal action would be desirable. Mr. Roberts said he would prefer to leave the word "may" because it gives the Executive Director the flexibility to possibly accomplish the same thing as would be accomplished by court action without spending staff time and funds on a legal action. He added the Commission could direct the Executive Director to take action with the Attorney General at any time it desired. Commissioner Houghteling said as long as the Commission could direct the Executive Director, he had no objection to the language.

Commissioner Houghteling then referred to page 6, Regulation No. 11040, item (g). This item refers to bringing the activities in compliance with the provisions of the McAteer-Petris Act. Commissioner Houghteling asked if that included by reference the Bay Plan and the Regulations of the Commission. Mr. Wilmar said yes. Mr. Wilmar said the staff recommends adoption of the changes to the Commission Regulations in order that they may become effective on the 6th of January. Chairman Evers asked if anyone else

wanted to speak to the application, and there was no response. MOTION: Commissioner Boggess moved that the public hearing be closed; seconded by Commissioner Cuneo, and unanimously approved.

MOTION: Commissioner Giacomini moved for adoption of the recommendations of the staff with a "yes" vote being a vote to adopt the amendments to the Commission Regulations, and a "no" vote to deny the adoption; seconded by Commissioner Boggess. The roll call vote on the adoption was as follows: Yes: Commissioners Boggess, Cuneo, Thompson, Fanning, Giacomini, Godfrey, Golden, Becks, Houghteling, Jacobson, Ergina, Wolfe, McCorquodale, Price, Raggio, Watkins, Evers. No: O. The motion was thus approved by a vote of 17 in favor, O against.

11. Public Hearing on Permit Application No. 22-73. Application of the Golden Gate Bridge, Highway and Transportation District for the construction of the Larkspur Ferry Termina on Corte Madera Creek west of U. S. Highway 101. Applicant proposes to: (1) dredge approximately 1.5 million cubic yards of material from the Bay and from existing land, adding 2.58 acres to the surface area of the Bay; (2) deposit the spoils at both land and Bay disposal sites; (3) cover approximately 1.57 acres of the newly created surface area of the Bay with floating docks and pile-supported platforms for terminal structures; and (4) within the 100-foot shoreline band, construct additional terminal facilities, including access roads, parking lots, and maintenance and commercial structures. (Though some fill is proposed, the project will result in a net increase in the surface area of the Bay of 1.01 acres.)

Mr. Roberts said that an application summary dated November 20, 1973, should be destroyed and the revised application summary dated December 6, 1973, should be used. Mr. Roberts indicated that a cover memorandum to all Commissioners, also dated December 6, gives an explanation of the reasons for the changes in the application summary. Copies of the above are part of the official copy of these minutes on file in the Commission's office. Mr. Robert indicated that in item No. 6, on the cover memorandum, first line, the word "at" should be used instead of the word "to" and all reference on the cover memorandum to "Drawing No. 2" should be changed to "Drawing No. 3."

Mr. Michael Wornum, Board member, Golden Gate Bridge, Highway and Transportation District represented the applicant. Mr. Wornum gave a brief statement on the proposed project. He explained that the ferry terminal will be at Larkspur on about 25 1/2 acres of land owned by the District. The commuter area consists of a terminal building, accompanying docks and commuter parking area. The terminal mooring will accommodate three vessels at night and continuous operation of two vessels all day. There will be access by automobile and feeder bus service and a pedestrian and bicycle path. He explained that they propose to eventually build two other terminals, one in Benicia and one in San Francisco. The ferries will carry more people at less energy than any other mode of transportation. He said there will be no commercial facilities on fill as long as he is on the Board of the Bridge District; and, this application does not include commercial facilities. He said he believed that a limited amount of commercial facilities oriented to the ferry operations make sense as long as it is not on fill. The District may apply for such facilities in the future. There will be some dredging and fill but the net effect of the project will be more open water. Mr. Wornum concluded that although their application has been the subject of controversy, he felt it was an important project especially to today's need for public transportation.

Mr. Frank Boerger, part of the design team that has been planning and designing the ferry terminal, introduced some of the other members of the design team. They included: Messrs. A. A. Braccia, architect; Bob Lawson, soils and geology consultant; Les Dittert, engineering; Asa Hanamoto, landscape architect; and Ms. Phyllis Faber, biologist. Mr. Boerger showed slides of the area. He said the ferries are being constructed in San Diego and are scheduled to arrive next summer. He explained that they are planning to put about one-half the spoils from the project, including the spoils that are classified by Regional Water Quality Control Board as pollution, with heavy metals on the Muzzi property which is south of the site next to the Heerdt marsh. The other one-half of the spoils will be transported to Alcatraz and dumped in the Corps of Engineers dumping grounds in open water

Chairman Evers asked if anyone wished to speak to the application.

Mr. Bill McBride, Zoning Administrator of Corte Madera said this project would have a definite effect on Corte Madera. He said the Town Planning Commission had obtained the EIR's at a rather late date and had not made recommendation; and, the Town Council would not be able to act until the middle or end of December. He requested the Commission withhold action on the application until the Town of Corte Madera has had an opportunity to make recommendations on the project. Mr. McBride said that although this project is not located in Corte Madera, it is adjacent to Corte Madera and it will have an impact on the Town.

Commissioner Giacomini asked if the Council would consider this on December 27. Mr. McBride responded that the Planning Commission would consider this matter on December 10 and send their recommendations to the Town Council. Commissioner Giacomini asked if Mr. McBride could urge that they submit their report before the next Commission meeting on January 3. Mr. McBride responded affirmatively. Chairman Evers said the BCDC would welcome any comments from Corte Madera at the Commission meeting of January 3.

Ms. Alice V. Higgins, a resident of Corte Madera, said that she was concerned about the preservation of the vegetation, bird and animal life in the Heerdt marsh. She asked if the fill containing heavy metals is placed back of the proposed dike (east of the railroad tracks) will the seepage that will travel underground to the Bay affect the spawning of the fish? Will normal vegetation grow on the heavy metal deposits? Also, will this growth in any way affect the many birds that travel the western flyway and pass this area? Will the many cubic yards of material dumped for the dike and back of the dike cause seismic disturbance?

She stated that she has asked these questions and has received no satisfactory answers. The reply has been that further study is needed.

Chairman Evers asked if the EIR responds to Ms. Higgins' inquiries about the fill containing the heavy metals. Mr. Boerger said their plans were to dispose of the dredged material that contains heavy metals behind a dike on the west side of the Muzzi property. In front of that dike, the dredged material that does not contain heavy metals will be sloped to Bay level and pickleweed and cord grass will be planted. Then the dike will be open so that tidal action can again restore the marsh in that area. Most of the heavy metals will be behind the dike that is built out of solid materials and will hold the water from the hydraulic dredging. It is not likely that there will be much migration of materials through that dike. It will be compacted and designed so that it will not fail under seismic loads. He said there is not unanimity of opinion that because one heavy metal is a little over the Regional Water Quality Control Board limits that the spoils are necessarily going to have an adverse effect on marine life, either plant or animal. That is a matter of a great deal of study at the present time by the San Francisco District Corps of Engineers and it is also the subject of a national study. He said the risks due to that are relatively low. He said no one could guarantee that there might not be some possibility of uptake of the heavy metals but the risks are low. Commissioner Houghteling asked if the District owns the site where the spoils are proposed to be placed. Mr. Boerger said the District is taking action to acquire that site under condemnation.

Commissioner Cuneo asked Mr. Boerger if the District had appeared before the Regional Water Quality Control Board and he responded that they had not appeared as yet but had submitted an application. The Regional Water Quality Control Board sent the application to be published, which indicates that they have essentially approved the proposal without formal hearings.

Dr. Ergina asked what type of metals they were referring to which are detrimental to the wildlife. Mr. Boerger said the samples taken were over Environmental Protection Agency limits, published a couple of years ago, in zinc and mercury and small amounts of lead and that is the reason they have proposed land disposal of those spoils rather than water disposal. Mr. Boerger responded affirmatively and said one-half the spoils are not over the Regional Water Quality Control Board limits for heavy metals.

Mr. Wolfe asked what was the acreage of the marsh to be restored. Mr. Boerger responded 188 acres.

Ms. Elizabeth Terwilliger, naturalist, .. Marin County, said she takes many adults and children on field trips and they have been studying the birds in the area. She said there is an island proposed to be removed that is a wonderful resting place for migrating water fowl. She asked if the ferry terminal is placed there, where would the birds go? If the second marshland is created, it will be marshland in a contained area. There is bicycling along the whole of the Corte Madera front and she has observed that as soon as the people come, the birds go offshore. Therefore, she proposed taking the spoils from the Corte Madera Creek and putting it in the Bay to create islands. She proposed the use of fiberglass to hold the islands. She said this will provide a disposal area and build islands to provide a place for migrating water fowl and shore birds. She said in Richardson Bay there is a wildlife refuge and many water fowl nest there because they are protected from the winds by Mt. Tamalpais and the hills around. In Corte Madera, the wind comes right down the whole Ross Valley and blows strongly. Having the islands off the Bay shore would give the birds a place to be safe from the winds. She suggested that this would be a very logical use for the spoils and it can be done immediately and the ferries could get to work.

In response, Ms. Faber said she agreed with Ms. Terwilliger. She said she thought the idea of islands was an excellent one. However, she thought it quite possible for the spoils to be laid in such a way that islands would be created in the marshland. Chairman Evers said it sounded like a constructive suggestion if it was possible in light of ownership and all of the problems of dredge spoils disposal. Commissioner Fanning said Ms. Terwilliger's suggestion would mean Bay fill and the District has done everything possible to avoid filling. She said she knew there should not be fill in the Bay but since the fish and wildlife in the area has been destroyed, these islands would help restore some bird life.

Mr. Thompson asked if the District was suggesting that the marshland be restored in a manner so that it is a combination of marshland and islands for the birds. Mrs. Faber said the manner in which the fill is deposited on the Muzzi property can be done in a number of ways. Islands could be formed. She said the important thing is that the Bay side dike be breached and the area becomes tidal. When it is tidal, there would be limited access to the marsh. Mr. Boerger said the District would probably not take the bayside dike down but breach them in multiple locations. The remaining dike will form islands. Ms. Terwilliger said she was in favor of the islands in the diked area, but there are problems with the people who go in there when no one is around and shoot. She said if the islands are off shore, which is important for water fowl, this could not happen.

Commissioner Godfrey said one of the proposals for disposal of spoil from the John Baldwin Ship Channel was to build a bird refuge inland; but, either the Corps of Engineers or Fish and Game or some other agency, after analysis, discarded that proposal. Mr. Roberts agreed that this is not a new idea or problem. The Commission should be very careful about this suggestion. There was a very large bird refuge proposed in San Pablo Bay on an island from fill. Although it would reduce the surface of the Bay, in the meantime it would benefit the fish and game aspects. There are some 54,000,000 yards in the Baldwin Channel, so BCDC should look very carefully at putting bird islands in San Francisco Bay.

Ms. Joi Losee, Larkspur, said she started working against the Larkspur Ferry Terminal quite a while ago. She said she had started a project of getting groups together to oppose the Larkspur Ferry Terminal (LFT) system. She said there were many organizations against the LFT--the Marin Alternative, the Marin Conservation League, Sierra Club, Larkspur Town Meeting and other organizations. Basically they were opposed to it because of its location, about 1.8 miles up to Corte Madera Creek. They believed that BCDC should not let the LFT come into this area because of the Bay Plan which states that this area is a high value wildlife habitat. She said she understood that the Regional Water Quality

Control Board was discouraging dredging throughout the Bay. She said she could see there is a huge dredging problem and the District will be using the Muzzi property as a dumping grounds for their dredging spoils. Every three years this area will have to be dredged and she wondered where they will be taking the spoils in ten years. She asked if the District had more land to be filled at a later date.

Chairman Evers directed Ms. Losee's questions to Mr. Boerger. He asked what were the plans for future maintenance dredging in the channel. Mr. Boerger said the regulations of the Regional Water Quality Control Board and the Environmental Protection Agency are currently under revision and whether they will be changed or not is unknown. The Board does recognize that maintenance dredging will be required and the new regulations will have to be met in the future. It is probable that the material that moves into the channel will be material from adjacent mud flats. At the present time, this material does not exceed the Environmental Protection Agency and the Regional Water Quality Control Board standards, therefore the maintenance dredge spoils could be disposed of in the open water.

Vice-Chairman Watkins asked Mr. Boerger what studies had been made of the silting problem in this area and what were the anticipated costs for maintaining dredging in the channel. Mr. Boerger said some preliminary studies of the prospective siltation have been made by Dr. Ray Krone of the University of California at Davis. These were included in the Draft Environmental Impact Report. A more recent study has been included in an addendum to the final impact report. Both reports estimate 90,000 to 180,000 yards per year of sedimentation in this channel. The reason for this wide range is because there are some factors that cannot be measured in advance of the channel construction and the precise effects of the tidal wedge on the new channel are not easily predictable. He said the cost will depend on the method of disposal that is required. It could run in the range of $1.25 to $1.50 per yard, or an estimated $115,000 to $140,000 for annual dredging cost.

Mr. Dwight Steele, San Francisco Bay Chapter of the Sierra Club, said they support the location of the Marin Ferry Terminal at Larkspur and support a BCDC map change, if needed, to permit this. But they are opposed to approval of the application in its present form. He said he had not had an opportunity to review the changes of the revised summary, but possibly they make worse some of the problems which were of concern. He understood the changes would mean that dredging would be increased, there would be rock fill instead of piles, that the parking would be increased from 600 to 1100 and there would be no public access platform. These changes seem to be moves in the wrong direction and he was already concerned about the need to provide for proper mitigation. He indicated that he thought it improper to proceed on this matter without hearing from Corte Madera because the dredge spoils are planned to be placed in an area that is in Corte Madera. He suggested that this hearing be kept open until the next meeting.

Mr. Steele said the Sierra Club believes that the ferry terminal in this location is within the policies of BCDC and ferry service is needed for Marin County. The Larkspur site appears to be the only feasible site. He said the Club was opposed to this site in the past and was in favor of the San Quentin site. However, because that was not available, and for other reasons, it seemed impossible to use any other site if the project is to go ahead in 1974. He felt there should be very tight control by this Commission, including future monitoring and possibly setting up a special committee for follow-up. The Club is concerned with the public access, which does not appear to be adequate. It is also concerned about commercial uses in this area which are not needed if not related to the ferry use.

Mr. Les Cohen, also representing the Bay Area Chapter of the Sierra Club, said that a concerted effort had been made to obtain another location for the ferry terminal site. One site considered was on State prison property land, approximately 3/4 of a mile bayward of the present site. But it no longer appears to be available. There did not seem to be any other suitable site. Nevertheless, there still were concerns about the environmental

damage at the Larkspur site. The Club is pleased with the mitigation proposal to restore the Muzzi property to a marsh. They regard this as a very integral part of the project and hope that the problem of acquisition of the land can be resolved. Regarding the issue of parking, Mr. Cohen said more reliance should be placed on the feeder bus system and car pooling rather than an increase of parking spaces. Mr. Cohen urged strong consideration of Ms. Terwilliger's proposal. He said the wildlife island seemed like a good way of replacing the lost bird habitat. Otherwise, there will be an additional 800,000 cubic yards of dredge spoils that will have to be disposed of at Alcatraz Island. There is uncertainty as to the rate of resiltation of the dredged channel. One of the proposals that was considered, but for the moment eliminated, was the construction of a silt barrier at the south edge of the channel. If the siltation is heavier than anticipated, this proposal may be revised in the future. He said this proposal would cause environmental damage and suggested consideration of all other possible means of disposal of the dredge spoils. He also said there should be a Citizens' Advisory Committee to work with the Bridge District both in carrying out the planning and the terminal construction.

Chairman Evers announced that the Commission had lost its quorum and the hearing would continue at the next meeting.

Commisioner Houghteling said it was his understanding that the only way a permit may be heard within 28 days of its filing would be if the Executive Director attests to certain circumstances, one of which is that there has been sufficient time for circulation. He said there had not been time to circulate the revised permit summary and therefore he questioned the status of the present hearing. Mr. Shute said he could see no problem if the hearing was continued at the next meeting.

Commissioner Raggio said it was his understanding that the spoils disposal site was within the city limits of Corte Madera and asked if all necessary permits had been obtained and whether the Bridge District is here validly or not. Mr. David Miller, Council Office of the Bridge District, responded that the District was exempt, as are other State agencies (Government Code Section 53090), for permit requirements of local agencies.

The meeting was adjourned at 4:30 p.m. and the hearing was put over until the next meeting. The next meeting of the Commission will be at 2:00 p.m., January 3, 1974, Room 1194 in the State Building, 455 Golden Gate Avenue, San Francisco.

Submitted,

Charles R. Roberts

CHARLES R. ROBERTS
Executive Director

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